



1-21-09

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant(s): Smith, Jr.

Application No.: 10/701,146

Filed: 11/4/2003

Title: Cargo Oriented Aircraft

Attorney Docket No.: 50121

Art Unit:  
3644

Examiner:  
Tien Dinh

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

PETITION TO THE DIRECTOR UNDER §1.181  
FROM AN ACTION OF AN EXAMINER IN THE EX-PARTE PROSECUTION  
AT THE ABOVE REFERENCED APPLICATION

Dear Sir:

In response to the Office Action made Final of October 21, 2008, applicant filed a response under §1.116 mailed November 21, 2008, requesting that the finality of the Action Made Final be removed as premature. The subsequent Advisory Action denied applicant's request (by silence.) Applicant, therefore, respectfully petitions the director under §1.181 to remove the finality at the above referenced Action as premature.

REMARKS

Request that finality of prior Action be removed

Applicant respectfully requests that the finality of the above referenced Action, mailed 10/21/2008, be removed as premature. Page 3 of the Action, third paragraph, contains a new ground of rejection, and is based upon a new reference. The new ground of rejection was not necessitated by Applicant's amendment.

Re Amendment to Claim 2 – Not Substantive

Dependent claim 2 had recited yaw control surfaces on the "wing." Claim 1 had referred, however, to a "larger lifting surface" rather than a "wing," (Paragraph 0010, last sentence, recites that: "the larger horizontal lifting surface is referred to as the wing.") Applicant amended "the wing" in claim 2, nonetheless, to "the larger lifting surface" for consistency of antecedent basis. Such was not a substantive matter. The amendment did not necessitate the new ground of rejection.

The New Ground of Rejection Relates to a Prior Omission of Any Basis for Rejection

Rather, the new ground of rejection, stated on page 3 third paragraph, rejects claim 2 over Rutan '800 in view of Rutan ATTT and further in view of Burnelli. Reference Burnelli is newly applied in regard to the limitation of yaw control surfaces on the larger lifting surface, the limitation of claim 2.

The Examiner states that, in order to definitely show yaw control surfaces on the larger lifting surface, a citation to Burnelli 1,987,050 is necessary.


The prior Action of 3/19/08 in regard to claim 2 had made no finding of any yaw control surfaces on the "wing" or "larger lifting" surface, in any reference. The limitation of claim 2 had not been addressed. Thus, applicant's amendment to claim 2 did not necessitate the new ground of rejection. Rather the Examiner's amendment corrected a prior oversight of not citing any reference in rejection of the claim.

PETITION

Applicant respectfully petitions that the finality of the above referenced Office Action be removed as premature, that the Request for Continuing Examination filed 1/20/09 under §1.114 be regarded as a Response to a Non-Final Office Action and that the fee filed with the Request for Continuing Examination be refunded.

Respectfully Submitted,

1/20/9  
Date

  
Sue Z. Shaper  
Attorney/Agent for Applicant(s)  
Reg. No. 31663

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<b>TRANSMITTAL FORM</b>  (to be used for all correspondence after initial filing)	Application Number	10/701,146	
	Filing Date	Nov 4, 2003	
	First Named Inventor	Smith, Jr., Frank C.	
	Art Unit	3644	
	Examiner Name	Tien Dinh	
Total Number of Pages in This Submission		Attorney Docket Number	50121

ENCLOSURES (Check all that apply)		
<input type="checkbox"/> Fee Transmittal Form <input type="checkbox"/> Fee Attached <input type="checkbox"/> Amendment / Reply <input type="checkbox"/> After Final <input type="checkbox"/> Affidavits/declaration(s) <input type="checkbox"/> Extension of Time Request <input type="checkbox"/> Express Abandonment Request <input type="checkbox"/> Information Disclosure Statement  <input type="checkbox"/> Certified Copy of Priority Document(s) <input type="checkbox"/> Reply to Missing Parts/ Incomplete Application <input type="checkbox"/> Reply to Missing Parts under 37 CFR 1.52 or 1.53	<input type="checkbox"/> Drawing(s) <input type="checkbox"/> Licensing-related Papers <input checked="" type="checkbox"/> <b>Petition</b> <input type="checkbox"/> Petition to Convert to a Provisional Application <input type="checkbox"/> Power of Attorney, Revocation Change of Correspondence Address <input type="checkbox"/> Terminal Disclaimer <input type="checkbox"/> Request for Refund <input type="checkbox"/> CD, Number of CD(s) _____ <input type="checkbox"/> Landscape Table on CD	<input type="checkbox"/> After Allowance communication to TC <input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences <input type="checkbox"/> Appeal Communication to TC (Appeal Notice, Brief, Reply Brief) <input type="checkbox"/> Proprietary Information <input type="checkbox"/> Status Letter <input type="checkbox"/> Other Enclosure(s) (please identify below):
<b>Remarks</b> It is believed that no further request for extension of time or fees are due. Notwithstanding, the Commissioner is authorized to charge any additional fees incurred or credit any overage to Deposit Account No.50-1753 ( 50121 ). Please regard this as a further request for extension of time to the extent one is needed. (Customer Account Number 22929).		

SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT			
Firm Name	Shaper Iler LLP		
Signature			
Printed name	Sue Z. Shaper		
Date	January 20, 2009	Reg. No.	31663

CERTIFICATE OF TRANSMISSION/MAILING			
I hereby certify that this correspondence is being transmitted to the USPTO or deposited with the United States Postal Service with sufficient postage as Express Mail # EM 225839365 in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on the date shown below.			
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Typed or printed name	Sue Shaper	Date	January 20, 2009

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